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SUMMARY RECORD OF THE 1147th MEETING

Held at Headquarters, New York,
on Thursday, 9 April 1992, at 3 p.m.

Chairman: Mr. POCAR

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Third periodic report of Yugoslavia (continued)

Comments of the Human Rights Committee on the initial report of Algeria

Comments of the Human Rights Committee on the third periodic report of Colombia

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The meeting was called to order at 3.30 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Yugoslavia (continued) (CCPR/C/52/Add.9)

1. At the invitation of the Chairman, Mr. Mitić (Yugoslavia) took a place at the Committee table.

2. The CHAIRMAN said that Committee members would make concluding observations on the third periodic report of Yugoslavia.

3. Mr. SADI said that the report and the presentation by the delegation had made the Committee more aware of the difficulties Yugoslavia was facing in implementing the Covenant. The issues of self-determination and excesses committed by the military forces none the less remained areas of concern.

4. He could sympathize with the proposition that the right to self-determination in Yugoslavia could not be seized by violent means but rather must be exercised within the constitutional framework. The delegation had said that it subscribed to texts such as General Assembly resolution 1514 (XV), yet, in an apparent contradiction, it had also stated that self-determination could not be pursued if it meant the dismemberment of certain nations. The latter statement also conflicted with the relevant articles of the Covenant. If the Government really did subscribe to resolution 1514 (XV), it should not be opposed to self-determination of peoples as long as that right was pursued within a legal framework. Its true position needed to be articulated, and the people needed clearer signals on how they could pursue their aspirations. In the Committee's view, the right to self-determination was guaranteed in the Covenant.

5. The Government of Yugoslavia had admitted that the military forces had committed excesses, but the Committee had yet to hear the Government express its commitment to investigate those allegations and send the findings to the Committee.

6. Mr. EL-SHAFEI said that, although the situation was complex, he still believed the Committee had been correct in requesting Yugoslavia to expedite presentation of its report, since a situation of non-respect of human rights guarantees could not be ignored.

7. He was especially concerned by the lack of broad guarantees, particularly of the rights set forth in articles 6, 7, 12 and 14, all the more so since the Government had been working towards reform before the outbreak of the civil war. Returning to that reform process should be a priority. He was also concerned about the country's prospects for peaceful evolution and the prevention of renewed violence. Moreover, the situation in Yugoslavia was

(Mr. El-Shafei)

bound to have a negative impact on neighbouring countries by creating refugees and problems in bilateral relations.

8. On the subject of self-determination, he wished simply to mention that Yugoslavia had been a pioneer in the adoption of minority rights declarations, and he hoped the Government could apply those principles to its own minority communities. It had served as an example to the international community in many ways, and he hoped to see it regain that important role.

9. Mr. FODOR said that, due to the secession of several republics, the central Government of Yugoslavia had reported that it had not been in a position to implement the Covenant throughout its territory. Gross violations of human rights had occurred, as a result of loss of control both of the territory and of the army. Inter-ethnic conflict had led to needless death, destruction and suffering. Not all violations could be attributed to armed conflict, however; a number of violations such as the repression of Albanians in Kosovo, had occurred in areas where no fighting had taken place. He hoped that the Serbian authorities were aware of the danger of a new outbreak of fighting.

10. The crisis could be resolved only by peaceful means, and the United Nations Protection Force in Yugoslavia (UNPROFOR) should play a major role in that regard. Positive elements noted in the dialogue with the Committee had been the commitment on the part of the Government to investigate human rights violations and abuses, and the efforts to draft a new constitution. New negative factors had also arisen, however. The Serbian Republic was becoming impatient with its minorities, and its formerly sensitive policies were becoming more severe as a result of rising nationalism. The status of the autonomous republics had been diminished. There was a risk that the proposed new constitution might ignore them entirely, and might also restrict the use of minority languages.

11. If there was any lesson to be drawn from recent events, it would be that ethnic conflict could not be resolved by violence, and that minorities could not be forced to assimilate. Respect for human rights and laws protecting the rights of minorities was an absolute necessity.

12. Mr. PRADO VALLEJO said that the fact that, despite its internal problems, the Yugoslav Government had sent a delegation to present its periodic report should be viewed as a positive sign. Committee members seemed to be in general agreement that recent events posed a danger to the principle of self-determination and respect for the rights of minorities. A civil war created particular human rights problems, but basic norms such as the Geneva Convention relative to the Protection of Civilian Persons in Time of War, should still be respected. Although the Yugoslav Government might not be able to assure implementation of the Covenant throughout its territory, it must make every possible effort to ensure that the Covenant was respected. Many

(Mr. Prado Vallejo)

human rights violations and abuses had been perpetrated by the Serbian army, and the authorities must investigate them, punish the guilty parties and prevent their recurrence, rather than attempt to explain them away on the grounds that they had occurred outside Serbian jurisdiction.

13. Under existing legislation, an individual could be held in detention for three months - with a possible further three-month extension without charge. That was excessively long and the provision must be reviewed.

14. The Yugoslav Government should assist UNPROFOR and make every effort to cooperate in pacification of the entire territory. Regrettably, the cease-fire had already been broken and human rights violations were continuing. The delegation had done its best to provide the Committee with all available information, but supplementary information was needed on implementation of the Covenant in domestic law and on means by which human rights could be guaranteed even during a state of civil war.

15. Mr. ANDO said that his remaining concerns related to the situation in Kosovo and that of the Muslim Slavs in Bosnia-Herzegovina, as well as the independence of the judiciary. It was unfortunate that the report had made no reference to developments in the human rights situation between 1983 and 1988. He expressed the hope that the Yugoslav Government would not abandon its efforts to comply with the Covenant and to respect the rights of all individuals under its de facto control.

16. Mr. MÜLLERSON said that it was clear that no side was entirely without blame. The Committee strongly condemned the excesses committed by secessionist groups, but none the less considered that they did not excuse those of the Government.

17. There was no right of secession guaranteed under international law; that was understandable, as international law had been created by nation-States. They would hardly sanction a right that which might be exercised to the detriment of their own territorial integrity. Neither was there any right concerning the use of force against secessionists. At the inception of the Yugoslav crisis, other European States had not recognized the breakaway republics but, on the contrary, had emphasized the need to preserve Yugoslavia's territorial integrity. It was only after the central Government had used force that they had begun cautiously to endorse the sovereignty of the republics. A similar process had occurred in the case of Lithuania vis-à-vis the Soviet Union.

18. He reiterated that ethnic minorities had no intrinsic right to self-determination, much less to secession. The question, however, was what constituted a nation and who constituted a minority. The proliferation of ever smaller States in the world was not necessarily to the advantage of the peoples concerned.

19. Mr. HERNDL emphasized that everyone recognized that Yugoslavia was dealing with a very complex situation, and that the central Government no longer controlled the whole country. Accordingly, it could not reasonably be asked to ensure full compliance with the Covenant throughout its territory. However, the central Government did remain responsible for the actions of its organs: the Parliament, the constitutional court, the administration and particularly the police and armed forces.

20. The situation of minorities with respect to the application of article 27 of the Covenant was precarious in perhaps the majority of States. However, every society, including Yugoslavia, should recognize the rights of its minorities. Those rights were in the process of being defined in the context of the Conference on Security and Cooperation in Europe; in addition, a draft declaration on the rights of minorities had recently been drawn up by the Commission on Human Rights.

21. The Committee had taken note of Yugoslavia's treatment of its minorities and hoped that that country's very complex and difficult situation could be resolved in the near future and that clear lines of responsibility could be established as to who was responsible for the implementation of the Covenant: the local authorities, the new republics, or the Belgrade Government.

22. It had been stated in paragraph 14 of the second periodic report of Yugoslavia (CCPR/C/28/Add.1) that, according to the basic principles of the Constitution, Yugoslavia should strive for international support to the peoples waging a just struggle for their liberation from all forms of national oppression and subjugation, and that support for such a struggle was in no way contrary to the principle of non-interference in the internal affairs of other States. He hoped that the new Government of Yugoslavia would live up to that statement.

23. Mr. WENNERGREN said that the issue of self-determination was one that had been much discussed in the Committee, especially with reference to Kosovo; it had also been of recent world-wide concern. The Committee's discussion might help generate new debate on the issue.

24. Yugoslavia was undergoing profound transformations, yet in answering members' questions the delegation had relied heavily on statutes and the Constitution. Real life, however, did not necessarily reflect the ideals of such texts. The situation was too fluid to assess, particularly with regard to implementation of the Covenant. The fact that a new constitution was being drafted and that a federal committee had been appointed to investigate atrocities was encouraging.

25. He emphasized that the Covenant might still be invoked in the courts of Slovenia, Croatia and the other republics for the protection of their citizens; it was the responsibility of those courts to protect individual human rights and he hoped that the secessionist States would continue to apply federal Yugoslav law.

26. Miss CHANET said that the Committee's dialogue with the Yugoslav delegation had shed light on the difficult situation facing the State party and the obstacles to the implementation of the Covenant. The first such obstacle was the loss of federal control over wide areas of the country, and the resulting inability of the State party to monitor respect for human rights throughout its territory. In connection with article 1 of the Covenant, she regretted that the right of secession implicit in the Yugoslav Constitution was not accompanied by a precise implementation procedure, which might have helped avoid the current conflict.

27. The second obstacle was the very serious actions and even atrocities that had been committed during the conflict, in violation of articles 6 and 7 of the Covenant. It was regrettable that the delegation had rejected information provided by non-governmental organizations on the grounds that it constituted "propaganda". In that context, the formation of an independent committee to investigate atrocities was helpful. The Government must examine the army's actions with a view to preventing the loss of innocent lives and regulating the use of force.

28. The third obstacle was the treatment of minorities in Yugoslavia, which ironically had theretofore been an international leader in the protection of minorities. The situation was worsening, particularly with regard to ethnic Albanians and Hungarians, and must be rectified.

29. The CHAIRMAN, speaking on the Committee's behalf, thanked the Yugoslav delegation for having, on such short notice and despite the current difficulties, presented a report on civil and political rights within the country, and for engaging in a dialogue with the Committee.

30. The Committee had raised certain issues of particular importance: self-determination, the excesses of the army and paramilitary forces, which were not justifiable even if others used the same tactics, and the protection of minorities.

31. There was still some doubt as to whether protection of human rights had been the Government's highest priority in its recent actions. It was not enough to submit information on human rights violations: efforts must be made to prevent violations or, if that was not possible, to investigate the violations and punish those responsible.

32. He hoped that respect for all Covenant rights would soon be fully ensured within Yugoslavia. Since its fourth periodic report was due in August 1993, the Committee would soon have the opportunity to review the situation once again.

33. Mr. MITIĆ assured the Committee that its comments would be duly conveyed to the Yugoslav Government, which intended to abide by all provisions of international law, including the Covenant. He reiterated the Government's commitment to investigating the excesses of all military units, including the

(Mr. Mitić)

Yugoslav army. It condemned all such crimes and would punish those responsible. The Government accepted full responsibility for all such acts.

34. With respect to the right of self-determination, he noted that some secessionist republics had committed violent acts and that other problems had arisen from their declarations of independence; the Government did not deny the right of the nations of Yugoslavia to self-determination and would not oppose its lawful exercise.

35. Referring to the question raised by Mr. Prado Vallejo, he noted that six months was the maximum time anyone could be held in detention without charge; that was similar to or less than the maximum period of detention in many nations of Western Europe.

36. Mr. Mitić withdrew.

The meeting was suspended at 4.45 p.m and resumed at 4.55 p.m.

Comments of the Human Rights Committee on the initial report of Algeria

37. Mr. NDIAYE, introducing the draft comments, said that the text reflected the views expressed by the members of the Committee. He commended the draft comments to the Committee for adoption.

Paragraph 1

38. Paragraph 1 was adopted.

Paragraph 2

39. Mr. SADI proposed that the word "emphasizes" in the first sentence should be replaced by the word "notes", adding that the word "laments", in the fifth sentence, was not quite appropriate.

40. The CHAIRMAN suggested that the fifth sentence could be reworded to read: "It also regrets the failure of the report ...". The last sentence of the paragraph might give an erroneous impression, in that the Committee itself had been delayed in its consideration of the report, and in any event, the report could obviously not refer to events taking place after its submission. It would be preferable to revise the reference in paragraph 4 to the states of emergency, to indicate exactly when they had occurred.

41. Mr. NDIAYE said that the last sentence reflected what had actually been said in the Committee, and that the Government could have submitted a supplementary report.

42. The CHAIRMAN pointed out that the Committee had not requested the State party to submit any such report.

43. Mr. SADI suggested that the difficulty might be resolved by revising the last sentence to read: "Lastly, it is unfortunate that the report, having been submitted on 5 April 1991, could not make reference ...".

44. Mr. DIMITRIJEVIĆ said that Mr. Ndiaye was correct in seeking to reflect the discussion in the Committee. The proposal made by Mr. Sadi would seem to resolve the problem, or the sentence could simply be reworded to read "could not make reference" or "could not refer".

45. Mr. ANDO endorsed the comments made by Mr. Dimitrijević.

46. The CHAIRMAN said that the last sentence would be amended to read "could make no reference ...".

47. Paragraph 2, as amended, was adopted.

48. Mr. NDIAYE pointed out that the Committee had received supplementary information from Algeria specifying which provisions of the Covenant had been derogated from under the state of emergency. In the interests of precision, the text of paragraph 2 should be amended to make it clear that the notification required under article 4 of the Covenant had indeed been made.

49. The CHAIRMAN agreed that paragraph 2 should be amended as suggested.

Paragraph 3

50. Mr. SADI said that the final sentence did not make it clear that the Ministry of Human Rights was no longer in existence, having been abolished when the democratic process had been interrupted.

51. Mr. NDIAYE suggested that the sentence should be amended to read "a Ministry of Human Rights, subsequently superseded by a national human rights monitoring body".

52. Paragraph 3, as amended, was adopted.

Paragraph 4

53. Mr. SADI said that the Committee should always remain impartial in commenting on certain sensitive and contested political situations. Paragraph 4, which began with the words "The Committee notes", went on to give what was essentially the State party's position that democratic procedures had had to be suspended in order to prevent an undemocratic takeover. The paragraph needed to be amended to make it perfectly clear that the Committee was not necessarily endorsing the State party's assertions.

54. Miss CHANET, Mr. ANDO, Mr. WENNERGREN, Mr. MÜLLERSON, Mr. SERRANO CALDERA and Mr. HERNDL said that they agreed that, as it stood, the paragraph might be misleading.

55. Mr. NDIAYE observed that, under article 40, States parties were to report on any factors and difficulties affecting the implementation of the Covenant. States parties must be allowed to speak for themselves, and the Committee could not in its comments substitute its own version of events. The first two sentences of paragraph 4 were objective statements of fact on which there could be no disagreement. The third and fourth sentences set out the Algerian authorities' assessment of events. He saw no need therefore to amend the paragraph.

56. The CHAIRMAN suggested that the clause "to prevent forces considered hostile to democracy" in the third sentence should be amended to read "to prevent forces they considered ...". That would make it clear that the view stated was Algeria's, not the Committee's.

57. It was so decided.

58. Paragraph 4, as amended, was adopted.

Paragraph 5

59. Mr. SADI proposed that the word "worried" in the second sentence of the English version should be replaced by the word "concerned".

60. Paragraph 5, as amended, was adopted.

Paragraph 6

61. Mr. MÜLLERSON said that it was inaccurate to say that measures taken to assist minorities were insufficient, because there had been no discussion in the Committee of any measures taken. What the Committee members had disliked was that the State party did not acknowledge the existence of minorities.

62. Mr. NDIAYE proposed replacing the second clause beginning with the words "and considers" with the phrase "and the non-recognition of minorities existing in Algeria, especially the Berbers".

63. It was so decided.

64. Paragraph 6, as amended, was adopted.

Paragraph 7

65. Mr. SADI proposed adding at the end of the first sentence the phrase "under fair and free conditions".

66. Paragraph 7, as amended, was adopted.

67. The draft comment on the initial report of Algeria, as a whole and as amended, was adopted.

Comments of the Human Rights Committee on the third periodic report of Colombia

68. Mr. WENNERGREN said that in his draft he had followed the guidelines for drafting such comments and, after consultation with a number of members of the Committee, had circulated a revised draft.

Paragraph 1

69. The CHAIRMAN recalled that the Committee had agreed to refer simply to its "comments"; the word "concluding" should therefore be deleted.

70. Paragraph 1, as amended, was adopted.

Paragraph 2

71. Mr. SADI proposed that the word "sincere" in the first line should be deleted leaving the Committee merely expressing its "appreciation".

72. It was so decided.

73. Paragraph 2, as amended, was adopted.

Paragraphs 3 and 4

74. Paragraphs 3 and 4 were adopted.

Paragraph 5

75. Mr. AGUILAR suggested that the comma before the word "which" in the second line should be put after the word; that the word "still" in the third line should be deleted, because no incidence of homicide, disappearances and torture could ever be acceptable.

76. It was so decided.

77. Paragraph 5, as amended, was adopted.

Paragraph 6

78. After a discussion in which the CHAIRMAN, Mr. DIMITRIJEVIĆ, and Mr. SADI took part, the CHAIRMAN proposed that the first sentence should be broken into two: the first sentence would thus end with the word "violations" in the second line. The new second sentence would begin "It should eliminate impunity ...".

79. It was so decided.

80. Paragraph 6, as amended, was adopted.

81. The draft comments on the third periodic report of Colombia, as a whole and as amended, were adopted.

The meeting rose at 6.05 p.m.